

1992-1993 Ky. Op. Atty. Gen. 2-56, Ky. OAG 92-39, 1992 WL 540960 (Ky.A.G.)

*1 Office
of the Attorney General
Commonwealth of Kentucky

OAG 92-39

March 11, 1992

Re: Whether County Fiscal Court May Make Purchases From Entities Owned or Controlled by Individuals Having Certain Blood or Marriage Relationship to Fiscal Court Members. AGO Corr. No. 91-(O)-243.

Hon. Art Schmidt
State Senator, 11th District
Capitol Annex
Frankfort, Kentucky 40601

Dear Senator Schmidt:

By letter of February 10, 1992, you ask whether a fiscal court may purchase goods or services from businesses owned or controlled by individuals who are (1) spouses; (2) children; (3) siblings; (4) parents; or (5) in-laws, of a fiscal court member.

You cite § 173 of Kentucky's Constitution as establishing a felony crime for officials, including county officials, to receive, directly or indirectly, profit from public funds spent or allocated by them. You also indicate that [KRS 61.190](#) essentially restates the Constitutional prohibition.

There is no Kentucky statute specifically prohibiting a fiscal court from purchasing goods or services from firms owned or controlled by persons in one of the relationship categories asked about in your letter. Thus, unless a fiscal court member would benefit from or have a significant interest in a procurement of goods or services from a firm owned or controlled by one related by blood or marriage, subject to conditions discussed below, a fiscal court could procure goods or services from a firm owned or controlled by one who was a spouse, child, sibling, parent, or in-law, of a fiscal court member.

Several existing statutes ban fiscal court members from having an interest in governmental procurements. Depending upon the facts of a given case, a fiscal court member's blood or marriage relationship with one who owns or controls a business which would provide goods or services to a county, may give a fiscal court member an interest in the firm's business with the county, effectively banning a fiscal court from dealing with such firm.

Aside from the statutory prohibitions, that might prevent a fiscal court's purchasing goods or services from a firm owned or controlled by one having a given blood or marriage relationship to a member of the court, is the common law ban on certain conflicts of interest. Discussion follows.

The membership of a fiscal court consists of magistrates, sometimes termed “justices of the peace,” or where applicable, “commissioners,” and the county judge/executive. Persons who hold these offices are recognized as being county officers.

There is no Kentucky statute expressly banning a fiscal court from purchasing goods or services from a spouse, child, sibling, parent, or in-law of a fiscal court member. Certain provisions of Kentucky law, however, may operate to impose such a ban, if a fiscal court member has a significant interest in a business owned or controlled by an individual related to a fiscal court member in one of the relationship categories you have mentioned, or in a procurement from such business.

***2 § 173 of the Constitution of Kentucky** provides:

The receiving, directly or indirectly, by any officer of the Commonwealth, or of any county, city or town, or member or officer of the General Assembly, of any interest, profit or perquisites arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

KRS 61.190, mentioned in your letter, provides:

Any public officer who shall receive, directly or indirectly, any interest, profits or perquisites arising from the use or loan of public funds in his hands, or to be raised through his agency, shall be punished by confinement in the penitentiary for not less than one (1) nor more than five (5) years. The judgment of conviction shall recite that the offender is disqualified to hold any public office thereafter.

While not mentioned in your letter, **KRS 61.210**, and **KRS 61.220**, must also be considered in relation to your questions.

KRS 61.210 provides:

- (1) No justice of the peace, while he is a member of the fiscal court, shall, directly or indirectly:
 - (a) Become interested in or receive benefits or emoluments from any contract let by the fiscal court of his county with relation to the building of roads or any internal improvements;
 - (b) Work or supervise work, for compensation, on any public road, bridge, culvert, fill, quarry pit or any other road work or internal improvement under any contract made with the fiscal court; or
 - (c) Furnish, for compensation, any material to the county to be used in the construction of any road or bridge or other internal improvement.
- (2) No county judge/executive or county attorney shall, directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in any contract let by the fiscal court for, the construction of any roads, bridges or parts thereof, or any other public or internal improvement.
- (3) Any officer who violates any of the provisions of this section shall be fined not less than fifty (50) nor more than two hundred dollars (\$200) or imprisoned in the county jail not less than ten (10) nor more than forty (40) days, or both, and shall forfeit his office.

KRS 61.220 provides:

- (1) Any member of the fiscal court who becomes interested, directly or indirectly, in any contract for work to be done or material to be furnished for the county or any district thereof, or who becomes interested in any claim against the county or state shall be fined not less than five hundred (500) nor more than five thou-

sand dollars (\$5,000) for each offense.

(2) If any county judge/executive or justice is, by the same act, guilty of a violation of this section and [KRS 61.210](#), he shall be punished as provided in [KRS 61.210](#).

***3** Evaluating the specific categories of relationships to fiscal court members you have asked about, against the provisions indicated above, we find as follows:

Where a spouse of a fiscal court member owns or controls a business from which the fiscal court would purchase goods or services, the fiscal court member might have a marital interest in economic benefits flowing to the spouse through the county's purchases. Accordingly, depending upon the specific facts involved, a fiscal court's purchase of goods or services from the spouse of a court member might place the member in violation of [KRS 61.190](#), [61.210](#), or [61.220](#). See OAG 64-466, copy enclosed. Note however, that no Kentucky statute expressly bans a fiscal court's purchase of goods or services from a business owned or controlled by the spouse of a fiscal court member, and in recent years, a less stringent view has been taken regarding the interest of one spouse in the business activities of the other. Simply put, unless an interest is demonstrated on the part of a fiscal court member in a procurement awarded to an entity owned or controlled by the member's spouse, a violation of one of the provisions indicated above is not established. See letter of February 19, 1992, from Emerson (Attorney General's Office) to Williams, copy enclosed.

In the case of children of a fiscal court member, a fiscal court member does not have a recognized interest in a business owned or controlled by a child or children. Unless the facts of a given case demonstrate a significant interest on the part of a fiscal court member in the court's procurement of goods or services from a firm owned or controlled by a child of a fiscal court member, there would not be a violation of [KRS 61.190](#), [61.210](#), or [61.220](#). See, for example, OAG's 76-253 and 81-360 (copies enclosed).

With respect to fiscal court's purchasing goods or services from a firm owned or controlled by siblings, parents, or in-laws of a fiscal court member, the rule would be the same as in the case of a child of a court member. Unless an interest within the meaning of [KRS 61.190](#), [61.210](#), or [61.220](#) with such firm were shown, there would not be a violation of those provisions.

As noted, in addition to statutory considerations, the common law doctrine against conflicts of interest by those responsible for administering the business of others (e.g., the members of a fiscal court), might be brought to bear upon circumstances in which a conflict of interest exists because of a blood or marriage relationship with one who owns or controls a business, from which the fiscal court seeks to procure goods or services. See for example, *Commonwealth v. Withers, Ky., 98 S.W.2d 24 (1936)*.

Each case involving a possible violation of one of the specific statutory provisions referred to above must be evaluated in view of its specific facts. The views expressed above assume that all general purchasing requirements (e.g., KRS Chapter 45A or [KRS 424.260](#)) have been complied with, that a procurement is in the best interest of the county, that inside information is not involved, and that a procurement contract with a relative of a fiscal court member is not awarded to such individual because of such relationship. The views expressed in this letter are not intended to be, and should not be taken as, dispositive regarding the facts of a given case.

Sincerely,

***4** Chris Gorman
Attorney General

Gerard R. Gerhard
Assistant Attorney General

(502) 564-7600

1992-1993 Ky. Op. Atty. Gen. 2-56, Ky. OAG 92-39, 1992 WL 540960 (Ky.A.G.)

END OF DOCUMENT